

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERKSHIRE GAS COMPANY,

Defendant.

Civil Action No.

COMPLAINT

The United States of America, by and through its undersigned attorneys, by the authority of the Attorney General of the United States, and on behalf of the United States Environmental Protection Agency ("EPA"), alleges:

PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to Sections 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607(a). The United States seeks the recovery, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), of costs that have been incurred by the United States in response to the release and/or threatened release of hazardous substances at the 1½ Mile Reach, which is a portion of the GE-Pittsfield Housatonic River Site in Pittsfield, Massachusetts ("the Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the release or threatened release of hazardous substances that gave rise to this claim occurred in this District.

#### DEFENDANT

4. Berkshire Gas Company ("Berkshire Gas") is a corporation established under the laws of the State of Massachusetts, with headquarters in Massachusetts.

#### THE SITE

5. The Site is a mile and a half stretch of the Housatonic River adjacent to the Berkshire Gas East Street Plant in Pittsfield, Massachusetts, where Berkshire Gas operated from 1902 to 1973.

6. Berkshire Gas also operated a plant near the River at Deming Street in Pittsfield, approximately one mile downstream of the East Street Plant, from 1853 to 1902.

7. Berkshire Gas produced various wastes at both plants, including coal and oil tars and liquors, drip oils and sludges, iron oxide chips, heavy sludges, and cinders, all of which contained hazardous substances.

8. During the course of its operations at both plants, Berkshire Gas stored, disposed of and released hazardous substances into the environment.

9. Hazardous substances disposed of and/or released by Berkshire Gas at or from both of its plants are present in the environment at the 1½ Mile Reach, in surface and subsurface soils, ground and surface waters, and sediment.

#### RESPONSE ACTIONS BY THE UNITED STATES

10. EPA determined that certain response actions were necessary to respond to the release of hazardous substances from the Site and the resulting harm or threat of harm to the public health or welfare or the environment.

11. EPA undertook removal action activities, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, to respond to the release or threatened release of hazardous substances from the Site. The removal action is known as the 1½ Mile Reach Removal Action and was selected pursuant to EPA's Engineering Evaluation /Cost Analysis for the 1½ Mile Reach.

12. EPA's activities in response to the release or threat of release of hazardous substances at the Site, including all enforcement activities related thereto, constitute response actions, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

#### CLAIM FOR RELIEF

13. Paragraphs 1 through 12 of this Complaint are realleged and incorporated by reference.

14. Actual "releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22) and 9607(a), have occurred and continue to occur into the environment and at the Site.

15. At times relevant to this action, hazardous substances were disposed of at the Site, as the term "disposal" is defined in Section 101(29) of CERCLA, 42 U.S.C. §§ 9601(29).

16. Defendant Berkshire Gas is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Defendant Berkshire Gas is a person "who, by contract, agreement, or otherwise, arranged for disposal or treatment, ... of hazardous substances," as defined in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), which were disposed of at the Site.

18. The United States has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the release at the Site. The United States has incurred at least \$2,000,000 in unreimbursed response costs at the Site.

19. These costs incurred by the United States in connection with the Site were not inconsistent with the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

20. Berkshire Gas is liable for all response costs incurred by the United States regarding the removal action at the Site.

#### REQUEST FOR RELIEF

THEREFORE, the plaintiff, United States of America, requests that this Court:

1. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding defendant liable for all response costs incurred by the United States regarding the removal action at the Site, plus interest accrued thereon;

2. Enter a declaratory judgment regarding defendant's liability for response costs that will be binding on any subsequent action or actions to recover further response costs regarding the Site;

3. Award the United States its costs and disbursements in this action; and

4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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Certificate of Service

I, Catherine Adams Fiske, certify that the foregoing Complaint was filed through ECF and was served electronically on James Bieke, email account \_\_\_\_\_, counsel to General Electric Company, and \_\_\_\_\_, email account \_\_\_\_\_, counsel to Berkshire Gas, at the foregoing email accounts, on \_\_\_\_\_. Berkshire Gas and General Electric have agreed that this method of service is adequate for purposes of this pleading in this matter.

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Catherine A. Fiske